

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 231

**HOUSE BILL 2472**

AN ACT

AMENDING SECTIONS 15-121, 38-711, 38-747 AND 38-797.07, ARIZONA REVISED  
STATUTES; RELATING TO RETIREMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-121, Arizona Revised Statutes, is amended to read:

15-121. School employees; participation in federal retirement plans and deferred compensation plans; prohibition against use of public monies; exceptions

A. Employees of school districts, accommodation school employees, employees of the community college districts, employees of the universities and all other certificated and noncertificated employees of the schools of this state, including those located at state institutions, may participate in ~~the federal tax sheltered annuity plan~~ RETIREMENT OR DEFERRED COMPENSATION PLANS as provided in 26 United States Code section ~~403~~ SECTIONS 401(a), 403(b) AND 457(b), if the governing body approves.

B. Upon election by an employee to participate ~~in the federal annuity plan~~ THROUGH SALARY REDUCTION CONTRIBUTIONS IF PERMITTED UNDER FEDERAL LAW OR BY ELECTION OF THE GOVERNING BOARD TO MAKE NONELECTIVE EMPLOYER CONTRIBUTIONS, the governing board of a school district, the county school superintendent, the community college district governing board, the Arizona board of regents or other governing body or employer of the employee shall:

1. Invest SUCH an amount AS AUTHORIZED BY THE EMPLOYEE, to be reduced from the regular annual salary of the employee, ~~as the employee may authorize, in annuities as provided in~~ IN A 26 United States Code section 403 403(b) TAX SHELTERED ANNUITY OR CUSTODIAL ACCOUNT OR A 26 UNITED STATES CODE SECTION 457(b) DEFERRED COMPENSATION PLAN.

2. INVEST NONELECTIVE EMPLOYER CONTRIBUTIONS IN A 26 UNITED STATES CODE SECTION 401(a) DEFINED CONTRIBUTION PLAN OR A 26 UNITED STATES CODE SECTION 403(b) TAX SHELTERED ANNUITY OR CUSTODIAL ACCOUNT.

~~C. An employee may also participate in a deferred compensation plan approved by the governing body and may authorize the necessary deductions from his regular salary.~~

~~D.~~ C. The amount to be invested shall be determined by the employee not less than fifteen days prior to his BEFORE THE EMPLOYEE'S first payday in the school year, or at any time during the school year at the option of the governing body. The employing body or county school superintendent shall assume no responsibility other than to make the requested payments during the actual time of the employment of the employee. The employer shall transfer to the fund manager the employee contributions within ten working days after each and every payroll date. Contributions transferred after that date shall include a penalty of six per cent a year for each day the contributions are late. The penalty shall be paid by the employer. If the employee changes his THE EMPLOYEE'S employment to another school or school district, he THE EMPLOYEE may authorize his THE EMPLOYEE'S new employer to continue the payments if the governing body approves.

~~E.~~ D. State, county, district or other public monies shall not be used in the purchase of any annuity or payment of any deferred compensation

1 authorized by this article, except for monies authorized ~~to be paid and used~~  
2 ~~for severance pay, sick leave payouts or vacation payouts~~ FOR THE FOLLOWING  
3 PURPOSES:

4 1. THE RECRUITMENT AND RETENTION OF SELECTED EMPLOYEES, INCLUDING  
5 TEACHERS WHEN THERE ARE SHORTAGES OF TEACHERS.

6 2. AS A BENEFIT TO ENCOURAGE TEACHERS SPECIFICALLY SELECTED BY THE  
7 GOVERNING BOARD OR THE BOARD'S AUTHORIZED DESIGNEE TO TEACH IN AN  
8 UNDERPERFORMING SCHOOL.

9 3. FOR THE REDUCTION OF THE UNFUNDED LIABILITIES OF UNUSED LEAVE PAY  
10 ACCRUALS WITH IN-SERVICE NONELECTIVE EMPLOYER CONTRIBUTIONS.

11 4. FOR THE REPLACEMENT OF UNUSED LEAVE PAY OR OTHER TYPES OF SEVERANCE  
12 PAY AT THE TIME OF SEVERANCE OF EMPLOYMENT.

13 5. TO BUY OUT THE INDIVIDUALLY NEGOTIATED CONTRACTS OF KEY EMPLOYEES.

14 6. TO PROVIDE INCENTIVES FOR THE EARLY RETIREMENT OF SELECTED  
15 EMPLOYEES AS DETERMINED BY THE GOVERNING BOARD.

16 E. IF MONIES ARE CONTRIBUTED PURSUANT TO SUBSECTION D, PARAGRAPH 4, 5  
17 OR 6, AT THE DISCRETION OF THE GOVERNING BOARD, THOSE MONIES MAY BE  
18 CONTRIBUTED PURSUANT TO 26 UNITED STATES CODE SECTION 401(a) ONLY IN THE  
19 FINAL YEAR OF SERVICE, OR PURSUANT TO 26 UNITED STATES CODE SECTION 403(b)  
20 BOTH IN THE FINAL YEAR OF SERVICE AND FOR UP TO FIVE TAX YEARS FOLLOWING THE  
21 TAX YEAR OF THE FINAL YEAR OF SERVICE.

22 Sec. 2. Section 38-711, Arizona Revised Statutes, is amended to read:

23 38-711. Definitions

24 In this article, unless the context otherwise requires:

25 1. "Active member" means a member as defined in paragraph 23,  
26 subdivision (b) of this section who satisfies the eligibility criteria  
27 prescribed in section 38-727 and who is currently making member contributions  
28 as prescribed in section 38-736.

29 2. "Actuarial equivalent" means equality in value of the aggregate  
30 amounts expected to be received under two different forms of payment, based  
31 on mortality and interest rate assumptions approved from time to time by the  
32 board.

33 3. "ASRS" means the Arizona state retirement system established by  
34 this article.

35 4. "Assets" means the resources of ASRS including all cash,  
36 investments or securities.

37 5. "Average monthly compensation" means:

38 (a) For a member whose membership in ASRS commenced before January 1,  
39 1984 and who left the member's contributions on deposit or reinstated  
40 forfeited credited service pursuant to section 38-742 for a period of  
41 employment that commenced before January 1, 1984, the monthly average of  
42 compensation on which contributions were remitted during a period of sixty  
43 consecutive months during which the member receives the highest compensation  
44 within the last one hundred twenty months of credited service. Any month for  
45 which no contributions are reported to ASRS or that falls within a period of

1 nonpaid or partially paid leave of absence or sabbatical leave shall be  
 2 excluded from the computation. The sixty consecutive months may entirely  
 3 precede, may be both before and after or may be completely after any excluded  
 4 months. If the member was employed for less than sixty consecutive months,  
 5 the average monthly compensation is based on the total consecutive months  
 6 worked. PAYMENTS FOR ACCUMULATED VACATION OR ANNUAL LEAVE, SICK LEAVE,  
 7 COMPENSATORY TIME OR OTHER FORMS OF TERMINATION PAY WHICH, PRIOR TO THE  
 8 EFFECTIVE DATE OF THE AMENDMENT TO THIS SECTION, CONSTITUTE COMPENSATION FOR  
 9 MEMBERS WHOSE MEMBERSHIP IN ASRS COMMENCED BEFORE JANUARY 1, 1984, DO NOT  
 10 CEASE TO BE INCLUDED AS COMPENSATION IF PAID IN THE FORM OF NON-ELECTIVE  
 11 EMPLOYER CONTRIBUTIONS UNDER A 26 UNITED STATES CODE SECTION 403(b) PLAN SO  
 12 LONG AS ALL PAYMENTS OF EMPLOYER AND EMPLOYEE CONTRIBUTIONS ARE MADE AT THE  
 13 TIME OF TERMINATION. CONTRIBUTIONS SHALL BE MADE TO ASRS ON THESE AMOUNTS  
 14 PURSUANT TO SECTIONS 38-735, 38-736 AND 38-737.

15 (b) Effective July 1, 1985, the monthly average of compensation on  
 16 which contributions were remitted during a period of thirty-six consecutive  
 17 months during which a member receives the highest compensation within the  
 18 last one hundred twenty months of credited service. Any month for which no  
 19 contributions are reported to ASRS or that falls within a period of nonpaid  
 20 or partially paid leave of absence or sabbatical leave shall be excluded from  
 21 the computation. The thirty-six consecutive months may entirely precede, may  
 22 be both before and after or may be completely after any excluded months. If  
 23 the member was employed for less than thirty-six consecutive months, the  
 24 average monthly compensation shall be based on the total consecutive months  
 25 worked. This subdivision applies only to members whose membership in ASRS  
 26 was effective after December 31, 1983 or who agree in writing as a binding  
 27 condition of eligibility for being granted the benefit advantages available  
 28 under this subdivision to have their benefit computed on the basis of the  
 29 definition of compensation.

30 6. "Board" means the ASRS board established in section 38-713.

31 7. "Compensation" means the gross amount paid to a member by an  
 32 employer as salary or wages, including amounts that are subject to deferred  
 33 compensation or tax shelter agreements, for services rendered to or for an  
 34 employer, or that would have been paid to the member except for the member's  
 35 election or a legal requirement that all or part of the gross amount be used  
 36 for other purposes, but does not include amounts paid in excess of  
 37 compensation limits established in section 38-746. Compensation includes  
 38 amounts paid as salary or wages to a member by a second employer.  
 39 Compensation, as provided in paragraph 5, subdivision (b) of this section,  
 40 does not include:

41 (a) Lump sum payments, on termination of employment, for accumulated  
 42 vacation or annual leave, sick leave, compensatory time or any other form of  
 43 termination pay whether the payments are made in one payment or by  
 44 installments over a period of time.

1 (b) Damages, costs, attorney fees, interest or other penalties paid  
2 pursuant to a court order or a compromise settlement or agreement to satisfy  
3 a grievance or claim even though the amount of the payment is based in whole  
4 or in part on previous salary or wage levels, except that, if the court order  
5 or compromise settlement or agreement directs salary or wages to be paid for  
6 a specific period of time, the payment is compensation for that specific  
7 period of time. If the amount directed to be paid is less than the actual  
8 salary or wages that would have been paid for the period if service had been  
9 performed, the contributions for the period shall be based on the amount of  
10 compensation that would have been paid if the service had been performed.

11 (c) Payment, at the member's option, in lieu of fringe benefits that  
12 are normally paid for or provided by the employer.

13 (d) Merit awards pursuant to section 38-613 and performance bonuses  
14 paid to assistant attorneys general pursuant to section 41-192.

15 8. "Contingent annuitant" means the person named by a member to  
16 receive retirement income payable following a member's death after retirement  
17 as provided in section 38-760.

18 9. "Credited service" means, subject to section 38-739, the number of  
19 years standing to the member's credit on the books of ASRS during which the  
20 member made the required contributions.

21 10. "Current annual compensation" means the greater of:

22 (a) Annualized compensation of the full pay period immediately before  
23 the date of a request to ASRS to purchase credited service pursuant to  
24 section 38-743 or 38-745.

25 (b) Annualized compensation of the partial year if the member has less  
26 than twelve months total credited service on the date of a request to  
27 purchase credited service pursuant to section 38-743 or 38-745.

28 (c) The sum of the twelve months of compensation immediately before  
29 the date of a request to ASRS to purchase credited service pursuant to  
30 section 38-743 or 38-745.

31 (d) The sum of the thirty-six months of compensation immediately  
32 before the date of a request to ASRS to purchase credited service pursuant to  
33 section 38-743 or 38-745 divided by three.

34 (e) If the member has retired one or more times from ASRS, the average  
35 monthly compensation that was used for calculating the member's last pension  
36 benefit times twelve.

37 11. "Early retirement" means retirement before a member's normal  
38 retirement date after five years of total credited service and attainment of  
39 age fifty.

40 12. "Effective date" means July 1, 1970, except with respect to  
41 employers and members whose contributions to ASRS commence thereafter, the  
42 effective date of their membership in ASRS is as specified in the applicable  
43 joinder agreement.

44 13. "Employer" means:

45 (a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment management" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

1 (ii) Pursuant to a leasing agreement between the employer and another  
2 person, performs services for the employer on a substantially full-time basis  
3 for at least one year.

4 (iii) Performs services under the primary direction or control of the  
5 employer.

6 24. "Member contributions" means all amounts paid to ASRS by a member.

7 25. "Normal costs" means the sum of the individual normal costs for all  
8 active members for each fiscal year. The normal cost for an individual  
9 active member is the cost that is assigned to the fiscal year using the  
10 projected unit credit method.

11 26. "Normal retirement age" means the age at which a member reaches the  
12 member's normal retirement date.

13 27. "Normal retirement date" means the earliest of the following:

14 (a) A member's sixty-fifth birthday.

15 (b) A member's sixty-second birthday and completion of at least ten  
16 years of credited service.

17 (c) The first day that the sum of a member's age and years of total  
18 credited service equals eighty.

19 28. "Political subdivision" means any political subdivision of this  
20 state and includes a political subdivision entity.

21 29. "Political subdivision entity" means an entity:

22 (a) That is located in this state.

23 (b) That is created in whole or in part by political subdivisions,  
24 including instrumentalities of political subdivisions.

25 (c) Where a majority of the membership of the entity is composed of  
26 political subdivisions.

27 (d) Whose primary purpose is the performance of a government related  
28 service.

29 30. "Retired member" means a member who is receiving retirement  
30 benefits pursuant to this article.

31 31. "Service year" means fiscal year, except that:

32 (a) If the normal work year required of a member is less than the full  
33 fiscal year but is for a period of at least nine months, the service year is  
34 the normal work year.

35 (b) For a salaried member employed on a contract basis under one  
36 contract, or two or more consecutive contracts, for a total period of at  
37 least nine months, the service year is the total period of the contract or  
38 consecutive contracts.

39 (c) In determining average monthly compensation pursuant to paragraph  
40 5 of this section, the service year is considered to be twelve months of  
41 compensation.

42 32. "State" means this state, including any department, office, board,  
43 commission, agency, institution or other instrumentality of this state.

44 33. "Vested" means that a member is eligible to receive a future  
45 retirement benefit.

1       Sec. 3. Section 38-747, Arizona Revised Statutes, is amended to read:  
2       38-747. Purchase of credited service; payment; limitations;  
3               definitions

4       A. A member who purchases credited service pursuant to section 38-738,  
5       38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

6       1. Make payments directly to ASRS as provided in subsection H of this  
7       section.

8       2. Elect to have the member's employer make payments as provided in  
9       subsection B of this section.

10      B. A member may elect to have the member's employer make payments for  
11      all or any portion of the amounts payable for the member's purchase of  
12      credited service pursuant to the sections prescribed in subsection A of this  
13      section through a salary reduction program in accordance with the following:

14      1. The amounts paid pursuant to a salary reduction program are in lieu  
15      of contributions by the electing member. The electing member's salary or  
16      other compensation shall be reduced by the amount paid by the employer  
17      pursuant to this subsection. For the purposes of this paragraph, "other  
18      compensation" includes a member's termination pay.

19      2. The member shall make an election pursuant to this subsection at  
20      any time on or after the date the member elects to purchase credited service  
21      pursuant to the sections prescribed in subsection A of this section and  
22      before the member's termination of employment. The election shall specify  
23      the number of payroll periods that deductions will be made from the member's  
24      compensation and the dollar amount of deductions for each payroll period  
25      during the specified number of payroll periods. In the case of an election  
26      to utilize all or any part of the member's termination pay to purchase  
27      credited service, the member's election shall be made at least three full  
28      calendar months before the date of the member's termination of employment and  
29      entitlement to receive the termination pay. After an election is made  
30      pursuant to this subsection, the election is binding on and irrevocable for  
31      the member and the member's employer during the member's remaining period of  
32      current employment. After a member makes an irrevocable election pursuant to  
33      this subsection, the member does not have the option of choosing to receive  
34      the contributed amounts directly. For the purposes of this paragraph,  
35      "termination pay" means any lump sum that is paid at the member's termination  
36      of employment for accrued vacation, sick leave or overtime pay.

37      3. A member who makes an irrevocable election pursuant to this  
38      subsection to have the member's employer make payments for less than all of  
39      the amounts payable for the member's purchase of credited service may  
40      irrevocably elect to have the member's employer make payments for all or any  
41      portion of the remaining amounts payable for the member's purchase of  
42      credited service. A member who makes one or more irrevocable elections  
43      pursuant to this subsection may also make other contributions to ASRS  
44      pursuant to subsection H of this section to the extent of any remaining  
45      amounts payable for which the member has not made an election pursuant to



1 this subsection. An additional election or contribution with respect to a  
2 portion of the amounts payable for the member's purchase of credited service  
3 does not alter, amend or revoke an irrevocable election already made pursuant  
4 to this subsection for any other portion of the amounts payable for the  
5 member's purchase of credited service.

6 4. If on termination of the member's ~~current~~ employment WITH AN ASRS  
7 EMPLOYER all amounts have not been paid to ASRS pursuant to the member's  
8 irrevocable election pursuant to this subsection, the member may pay ASRS,  
9 within thirty days after the member's termination of employment and subject  
10 to other limitations prescribed in this section, all or any portion of the  
11 unpaid amounts as provided in subsection H of this section. These payments  
12 do not alter, amend or revoke any irrevocable election already made pursuant  
13 to this subsection with respect to any amount to be paid by the member's  
14 employer while the member is employed by the member's employer.

15 5. Amounts paid by an employer pursuant to this subsection shall be  
16 treated as employer contributions for the purpose of determining tax  
17 treatment under the internal revenue code. The effective date of employer  
18 payments pursuant to this subsection shall not be before the date ASRS  
19 receives notification from the United States internal revenue service that  
20 pursuant to section 414(h)(2) of the internal revenue code the amounts paid  
21 by an employer pursuant to this subsection will not be included in the  
22 member's gross income for income tax purposes until those amounts are  
23 distributed by refund or retirement benefit payments.

24 6. Unless otherwise provided, member contributions paid by an employer  
25 pursuant to this subsection are treated for all other purposes under ASRS in  
26 the same manner and to the same extent as member contributions that are not  
27 paid by an employer pursuant to this subsection. ASRS shall not grant  
28 credited service for contributions made pursuant to this subsection until  
29 those contributions are received by ASRS. ASRS may assess interest or  
30 administrative charges attributable to any salary reduction election made  
31 pursuant to this subsection. The interest or administrative charges shall be  
32 added to the amount of contributions that is made to ASRS by the member each  
33 payroll period and that is paid by the member's employer. The interest or  
34 administrative charges shall not be treated as member contributions for any  
35 purposes under this article and a member or a member's beneficiary does not  
36 have a right to the return of the interest or administrative charges pursuant  
37 to any other provision of this article. Interest assessed pursuant to this  
38 subsection shall be at the rate specified by the board pursuant to section  
39 38-71j, paragraph 2.

40 7. IF A MEMBER TRANSFERS EMPLOYMENT FROM ONE PARTICIPATING EMPLOYER  
41 WITH WHICH THE MEMBER HAS MADE AN IRREVOCABLE ELECTION PURSUANT TO THIS  
42 SUBSECTION TO ANOTHER PARTICIPATING EMPLOYER, THE MEMBER AND THE SUCCESSOR  
43 PARTICIPATING EMPLOYER SHALL COMPLETE THE TERMS OF THE IRREVOCABLE ELECTION  
44 THAT THE MEMBER MADE WITH THE ORIGINAL PARTICIPATING EMPLOYER.

1 C. A member who elects before July 1, 1999 to receive retirement  
2 benefits based on section 38-771, subsection C, paragraph 2 or a member who  
3 elects to make contributions to ASRS pursuant to section 38-771.01,  
4 subsection F, paragraph 4 shall either make the member's additional  
5 contributions required pursuant to section 38-771, subsection E or allowed  
6 pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as  
7 provided in subsection H of this section or shall elect to have the member's  
8 employer make payments for those additional contributions as provided in  
9 subsection D of this section. A member who elected to be covered or who was  
10 deemed to be covered by section 38-771 on or before December 31, 1995 or who  
11 elects to make member contributions pursuant to section 38-771.01, subsection  
12 F, paragraph 3 is deemed to have made an irrevocable election pursuant to  
13 subsection D of this section to make the member's contributions to ASRS that  
14 are required by section 38-771, subsection D or allowed by section 38-771.01,  
15 subsection F, paragraph 3.

16 D. Any member contributions that are required by section 38-771,  
17 subsection D or that are allowed pursuant to section 38-771.01, subsection F,  
18 paragraph 3 are deemed to be made by the member to ASRS through a salary  
19 reduction program in accordance with the following:

20 1. A member may make member contributions pursuant to section 38-771,  
21 subsection E or section 38-771.01, subsection F, paragraph 4 through a salary  
22 reduction program elected pursuant to this subsection. If a member makes an  
23 irrevocable election pursuant to this subsection before July 1, 1999 to have  
24 the member's employer make payments for additional contributions pursuant to  
25 section 38-771, subsection E, the election continues in effect from and after  
26 June 30, 1999 and shall not be revoked, amended or altered by any election  
27 made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant  
28 to a salary reduction program are in lieu of contributions by the electing  
29 member. The member's salary or other compensation shall be reduced by the  
30 amount paid by the employer pursuant to this subsection.

31 2. Before a member's termination of employment, the member may make an  
32 election pursuant to this subsection at any time after the date the member  
33 elects to receive retirement benefits based on section 38-771, subsection C,  
34 paragraph 2 but before July 1, 1999 or at any time after the member elects to  
35 make member contributions pursuant to section 38-771.01, subsection F,  
36 paragraph 4. The election shall specify the number of payroll periods that  
37 deductions will be made from the member's compensation and the dollar amount  
38 of deductions for each payroll period during the specified number of payroll  
39 periods. After an election is made pursuant to this subsection, the election  
40 is binding on and irrevocable for the member and the member's employer during  
41 the member's remaining period of current employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's ~~current~~ employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. IF A MEMBER TRANSFERS EMPLOYMENT FROM ONE PARTICIPATING EMPLOYER WITH WHICH THE MEMBER HAS MADE AN IRREVOCABLE ELECTION PURSUANT TO THIS SUBSECTION TO ANOTHER PARTICIPATING EMPLOYER, THE MEMBER AND THE SUCCESSOR

1 PARTICIPATING EMPLOYER SHALL COMPLETE THE TERMS OF THE IRREVOCABLE ELECTION  
2 THAT THE MEMBER MADE WITH THE ORIGINAL PARTICIPATING EMPLOYER.

3 E. The following limits apply to contributions to ASRS:

4 1. Except to the extent paragraphs 2 and 3 of this subsection apply to  
5 certain contributions made by a member to ASRS and to the extent permitted  
6 under section 414(v) of the internal revenue code, if applicable, in any one  
7 limitation year, the annual additions contributed or allocated to ASRS for or  
8 on behalf of a member shall not exceed the lesser of either:

9 (a) Forty thousand dollars or a larger amount that is prescribed by  
10 the board and that is due to any cost of living adjustment announced by the  
11 United States secretary of the treasury pursuant to section 415(d) of the  
12 internal revenue code. The board shall increase the amount prescribed by  
13 this subdivision as of the effective date of the increase announced by the  
14 United States secretary of the treasury.

15 (b) One hundred per cent of the member's compensation for the  
16 limitation year. The compensation limit prescribed in this subdivision does  
17 not apply to any contribution to ASRS for medical benefits after a member's  
18 separation from service, within the meaning prescribed in section 401(h) or  
19 419A(f)(2) of the internal revenue code, that is otherwise treated as an  
20 annual addition.

21 2. Unless paragraph 4 of this subsection applies, for plan years  
22 beginning on or after July 1, 1998, in any one limitation year, the annual  
23 additions credited to ASRS for or on behalf of a member who makes  
24 contributions to ASRS to purchase credited service pursuant to section  
25 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable  
26 election has not been made pursuant to subsection B of this section shall not  
27 exceed the greater of either:

28 (a) The requirements of section 38-769. For the purposes of applying  
29 the limits prescribed in section 38-769 under this subdivision, the accrued  
30 benefit derived from the contributions shall be treated as an annual benefit  
31 and the reduced limit for certain early retirement in section 38-769,  
32 subsection C, paragraph 2 does not apply.

33 (b) Except as provided in paragraph 3 of this subsection, the  
34 requirements of paragraph 1 of this subsection. The contributions shall be  
35 treated as annual additions and any of the member's other annual additions  
36 for the limitation year shall be taken into account. For the purposes of  
37 applying the requirements of paragraph 1 of this subsection under this  
38 subdivision, the percentage of compensation limit in paragraph 1, subdivision  
39 (b) of this paragraph does not apply.

40 3. For plan years beginning on or after July 1, 1998, the requirements  
41 of paragraph 1 of this subsection shall not be applied to reduce the amount  
42 of credited service that may be purchased by an eligible member pursuant to  
43 section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the  
44 amount of credited service allowed to be purchased pursuant to those sections  
45 on August 5, 1997 without the application of any of the limits prescribed in

1 this section or section 415 of the internal revenue code. For the purposes  
2 of this paragraph, "eligible member" means a person who first becomes a  
3 member of ASRS before July 1, 1999.

4 4. Member contributions to ASRS to purchase credited service pursuant  
5 to section 38-743, 38-744 or 38-922 shall not be made by a member if  
6 recognition of that service would cause a member to receive a retirement  
7 benefit for the same service from ASRS and one or more other retirement  
8 plans. This paragraph does not apply to either of the following:

9 (a) Contributions made by an eligible member as defined in paragraph 3  
10 of this subsection, except that any service purchase by an eligible member is  
11 subject to any other limitations, including limitations on duplicative  
12 service purchase, otherwise provided in this article.

13 (b) Any member contributions with respect to which an irrevocable  
14 election has been made by a member pursuant to subsection B of this section,  
15 except that the service purchase is subject to any other limitations,  
16 including limitations on duplicative service purchase, otherwise provided in  
17 this article.

18 F. If a member's contributions are subject to the limitations of  
19 subsection E of this section, the contributions shall be treated as being  
20 made to a separate defined contribution plan. If the member's contributions  
21 exceed the limits prescribed in subsection E of this section when taking into  
22 account other member and employer contributions to ASRS on behalf of the  
23 member for the limitation year, the amount to be paid by the member shall be  
24 reduced to not exceed the limits prescribed in subsection E of this section  
25 and the remaining amount shall be carried forward to the next limitation  
26 year, unless the limits are exceeded in the next limitation year. If the  
27 limits are exceeded in the next limitation year, the procedure prescribed by  
28 this subsection shall be repeated until all payments have been made.

29 G. If, after the application of subsection F of this section, the  
30 annual additions on behalf of a member exceed the limitations prescribed in  
31 subsection E of this section, ASRS shall dispose of excess amounts by either  
32 of the following:

33 1. Returning to the member any contributions that are made by the  
34 member and that are nondeductible under the internal revenue code.

35 2. Holding the amounts in a suspense account established pursuant to  
36 subsection L of this section and allocating the amounts as either member or  
37 employer contributions for the benefit of the member in the next limitation  
38 year and before any further member or employer contributions are made that  
39 would constitute annual additions made to a defined contribution plan  
40 pursuant to section 415 of the internal revenue code. ASRS shall allocate  
41 contributions as prescribed in this section, and the amount allocated shall  
42 reduce the amount of the member or employer contributions for the limitation  
43 year in which the allocation is made.

1       H. To the extent that a payment under this subsection does not alter,  
2 amend or revoke any one or more currently effective irrevocable elections  
3 made by the member pursuant to subsection B or D of this section, the board  
4 may accept contributions made pursuant to section 38-771 or member  
5 contributions for the payment for credited service purchases pursuant to  
6 section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions  
7 made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in  
8 part, by any one or a combination of the following methods:

9       1. In lump sum payments.

10       2. Subject to the limitations prescribed in sections 401(a)(31) and  
11 402(c) of the internal revenue code and subsection J of this section,  
12 accepting a direct rollover of or a contribution by a member of an eligible  
13 rollover distribution from one or more:

14       (a) Retirement programs that are qualified under section 401(a) or  
15 403(a) of the internal revenue code.

16       (b) Annuity contracts described in section 403(b) of the internal  
17 revenue code.

18       (c) Eligible deferred compensation plans described in section 457(b)  
19 of the internal revenue code that are maintained by a state, a political  
20 subdivision of a state or any agency or instrumentality of a state or a  
21 political subdivision of a state.

22       3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii)  
23 of the internal revenue code, accepting from a member a rollover contribution  
24 of that portion of a distribution from an individual retirement account or  
25 individual retirement annuity described in section 408(a) or 408(b) of the  
26 internal revenue code that is eligible to be rolled over and would otherwise  
27 be includable as gross income.

28       4. Providing by rule that the contributions may be made in installment  
29 payments over a period of time.

30       1. To the extent that a payment under this subsection does not alter,  
31 amend or revoke any one or more currently effective irrevocable elections  
32 made by a member pursuant to subsection B or D of this section, the board may  
33 accept a direct trustee-to-trustee transfer from retirement programs that are  
34 qualified under section 401(a) or 403(a) of the internal revenue code, an  
35 annuity contract described in section 403(b) of the internal revenue code or  
36 an eligible deferred compensation plan described in section 457(b) of the  
37 internal revenue code for the payment for credited service purchases  
38 pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct  
39 trustee-to-trustee transfer is from a retirement program THAT IS qualified  
40 under section 401(a) of the internal revenue code, ~~which~~ AND THAT includes a  
41 cash or deferred arrangement described in section 401(k) of the internal  
42 revenue code, the member on whose behalf the transfer was made is not  
43 eligible to retire under section 38-764, subsection J, ~~before the date the~~  
44 member attains age ~~fifty~~ FIFTY-NINE and one-half YEARS OF AGE.

1 J. ASRS shall separately account for all amounts rolled over or  
2 directly transferred to ASRS.

3 K. ASRS shall not grant credited service under section 38-738, 38-742,  
4 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of  
5 this section until the contributions are received by ASRS. ASRS may assess  
6 interest or administrative charges attributable to any installment payment  
7 made pursuant to subsection H, paragraph 4 of this section to purchase  
8 credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or  
9 38-922. The interest or administrative charges shall be added to the amount  
10 of contributions made to ASRS by the member. The interest or administrative  
11 charges shall not be treated as member contributions for any purposes under  
12 this article, and a member or a member's beneficiary does not have a right to  
13 the return of the interest or administrative charges pursuant to any other  
14 provision of this article. Interest assessed pursuant to this subsection  
15 shall be at the rate specified by the board pursuant to section 38-711,  
16 paragraph 2.

17 L. ASRS shall establish a suspense account that conforms with 26 Code  
18 of Federal Regulations section 1.415-6(b)(6) regarding excess annual  
19 additions.

20 M. If the member retires before all payments are made pursuant to this  
21 section, ASRS shall calculate the member's benefits based only on the  
22 payments actually made.

23 N. On satisfaction of the requirements of this section, ASRS shall  
24 adjust the member's credited service history and add any additional service  
25 credits acquired.

26 O. Annual additions on behalf of a member in any limitation year shall  
27 be the sum of:

28 1. The amount of the member contributions made to ASRS to purchase  
29 credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922  
30 and with respect to which an irrevocable election made pursuant to subsection  
31 B of this section is not in effect.

32 2. The amount of member and employer contributions made to ASRS on  
33 behalf of a member who elected or was deemed to have elected to receive  
34 retirement benefits pursuant to section 38-771 or who is entitled to benefits  
35 pursuant to section 38-771.01, except that, other than as provided in  
36 subsection P of this section, corrective contributions shall be considered  
37 annual additions for the limitation years to which the contributions relate  
38 and interest and gains shall not be considered as annual additions for the  
39 purpose of any limitation prescribed in this article or in section 415 of the  
40 internal revenue code. If the corrective contributions exceed the limit on  
41 annual additions for a limitation year prior to the limitation year in which  
42 the corrective contributions are contributed by the employer to ASRS, the  
43 retirement benefit attributable to the excess corrective contributions shall  
44 be treated as an excess benefit and shall be payable to the member as any  
45 other excess benefit is payable pursuant to section 38-774, and the employer

1 shall pay the excess corrective contributions to the separate unfunded  
2 governmental excess benefit arrangement administered by the board pursuant to  
3 section 38-774.

4 3. Any member or employer contributions made to ASRS or any other plan  
5 that are treated as being made to a defined contribution plan maintained by  
6 an employer of the member.

7 4. Any forfeitures, including any income attributable to forfeitures,  
8 allocated for or on behalf of a member of ASRS or any other plan that are  
9 treated as being allocated under a defined contribution plan maintained by an  
10 employer of the member.

11 P. To the extent any portion of the subject benefits, if treated as  
12 subject to the benefit limitations of section 415(b) of the internal revenue  
13 code, exceed the applicable limitation on benefits pursuant to section 38-769  
14 for the form of distribution, a percentage of corrective contributions and  
15 interest and gains shall be treated as annual additions for the limitation  
16 year in which contributed by the employer to ASRS. This percentage of  
17 corrective contributions and interest and gains shall be equal to the  
18 percentage determined by dividing the subject benefits that exceed the  
19 limitation on benefits pursuant to section 38-769 by the subject benefits. If  
20 the corrective contributions and interest and gains that are treated as  
21 annual additions for the limitation year in which the corrective  
22 contributions and interest and gains are contributed by the employer to ASRS  
23 exceed the limit on annual additions for the limitation year, the retirement  
24 benefit attributable to the excess shall be treated as an excess benefit and  
25 shall be payable to the member as any other excess benefit is payable  
26 pursuant to section 38-774, and the employer shall pay the excess to the  
27 separate unfunded governmental excess benefit arrangement administered by the  
28 board pursuant to section 38-774.

29 Q. Subsection O of this section shall be construed and interpreted in  
30 accordance with 26 Code of Federal Regulations section 1.415-6 to the extent  
31 that section is applicable.

32 R. For the purposes of this section:

33 1. "Compensation" has the same meaning prescribed in section 38-769.

34 2. "Corrective contributions" means any contributions that are paid by  
35 an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that  
36 are attributable to employer contributions that should have been made for  
37 prior limitation years.

38 3. "Defined contribution plan" has the same meaning prescribed in  
39 section 38-769.

40 4. "Interest and gains" means employer contributions to ASRS pursuant  
41 to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are  
42 attributable to earnings and supplemental credits that would have been earned  
43 or added to a member's annuity payment.



1       5. "Limitation year" has the same meaning prescribed in section  
2 38-769.

3       6. "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT PARTICIPATES IN  
4 ASRS.

5       ~~6.~~ 7. "Subject benefits" means the retirement benefit received by a  
6 member pursuant to section 38-771.01 minus the sum of the portion of such  
7 retirement benefit attributable to contributions that were made by or on  
8 behalf of the member to the defined contribution program administered by ASRS  
9 for periods before July 1, 1981 and contributions that were made by the  
10 member after June 30, 1981 and that were not picked up as provided in section  
11 414(h)(2) of the internal revenue code.

12       Sec. 4. Section 38-797.07, Arizona Revised Statutes, is amended to  
13 read:

14       38-797.07. LTD program benefits; limitations; definitions

15       A. The LTD program is subject to the following limitations:

16       1. Except as provided in paragraph 7 of this subsection, monthly  
17 benefits shall not exceed two-thirds of a member's monthly compensation at  
18 the time disability commences, reduced by:

19       (a) Sixty-four per cent of social security disability benefits that  
20 the member or the member's dependents are eligible to receive.

21       (b) Eighty-three per cent of social security retirement benefits that  
22 the member is eligible to receive.

23       (c) All of any workers' compensation benefits.

24       (d) All of any payments for a veteran's disability if both of the  
25 following apply:

26       (i) The veteran's disability payment is for the same condition or a  
27 condition related to the condition currently causing the member's total  
28 disability.

29       (ii) The veteran's disability is due to, or a result of, service in  
30 the armed forces of the United States.

31       (e) All of any other benefits by reason of employment that are  
32 financed partly or wholly by an employer, including payments for sick leave.  
33 THIS SUBDIVISION DOES NOT INCLUDE ANY RETIREMENT BENEFIT THAT IS RECEIVED BY  
34 THE MEMBER PURSUANT TO A STATE RETIREMENT SYSTEM OR PLAN OTHER THAN ASRS.

35       (f) Fifty per cent of any salary, wages, commissions or other  
36 employment related pay that the member receives or is entitled to receive  
37 from any gainful employment in which the member actually engages.

38       2. Monthly benefits are not payable until a member has been totally  
39 disabled for a period of six consecutive months.

40       3. Monthly benefits are not payable to a member who is receiving  
41 retirement benefits from ASRS.

42       4. Monthly benefits are not payable to a member whose disability is  
43 due to, or a result of, any of the following:

44       (a) An intentionally self-inflicted injury.

45       (b) War, whether declared or not.

1 (c) An injury incurred while engaged in a felonious criminal act or  
2 enterprise.

3 (d) An injury or sickness for which the member received medical  
4 treatment within three months before the date of the member's coverage under  
5 the LTD program. This subdivision does not apply to a member who either:

6 (i) Has been an active member of an employer for twelve continuous  
7 months.

8 (ii) Is employed by an employer as of June 30, 1988.

9 5. Monthly benefits cease to be payable to a member at the earliest of  
10 the following:

11 (a) The date the member ceases to be totally disabled.

12 (b) The date the member:

13 (i) Ceases to be under the direct care of a doctor.

14 (ii) Refuses to undergo any medical examination or refuses to  
15 participate in any work rehabilitation program for which the member is  
16 reasonably qualified by education, training or experience and that is  
17 requested by the insurance company or claims administrator that is selected  
18 by the board to administer the LTD program.

19 (c) The date the member withdraws employee contributions with interest  
20 and ceases to be a member.

21 (d) The later of the following:

22 (i) The member's normal retirement date.

23 (ii) The month following sixty months of payments if disability occurs  
24 before sixty-five years of age.

25 (iii) The month following attainment of seventy years of age if  
26 disability occurs at sixty-five years of age or after but before sixty-nine  
27 years of age.

28 (iv) The month following twelve months of payments if disability  
29 occurs at or after sixty-nine years of age.

30 (e) If the member is convicted of a criminal offense and sentenced to  
31 more than six months in a jail, prison or other penal institution, the first  
32 day of the month following the first thirty continuous days of the member's  
33 confinement for the remainder of the confinement.

34 6. Monthly benefits are payable under the LTD program only for  
35 disabilities that commence on or after July 1, 1988.

36 7. The minimum benefit for a member who is entitled to receive  
37 benefits under the LTD program is fifty dollars per month.

38 8. Members are eligible to receive the benefits and payments described  
39 in paragraph 1 of this subsection, and the reductions provided by paragraph 1  
40 of this subsection apply even though the benefits are not actually paid as  
41 follows:

42 (a) For primary and dependent social security benefits, the members  
43 are eligible for the benefits until the benefits are actually awarded, or if  
44 the benefits are denied, until the member pursues the social security appeal  
45 process through a hearing before a social security administrative law judge

1 or until the insurance company or claims administrator determines that the  
2 member is not eligible for social security disability benefits.

3 (b) For benefits and payments from any other source provided in  
4 paragraph 1 of this subsection, the members are eligible for the benefits if  
5 it is reasonable to believe that the benefits will be paid on proper  
6 completion of the claim or would have been paid except for the failure of the  
7 member to pursue the claim in time.

8 9. A member shall be considered totally disabled if:

9 (a) During the first thirty months of a period of disability, the  
10 member is unable to perform all duties of the position held by the member  
11 when the member became totally disabled.

12 (b) For a member who has received monthly benefits for twenty-four  
13 months within a five-year period, the member is unable to perform any work  
14 for compensation or gain for which the member is reasonably qualified by  
15 education, training or experience in an amount at least equal to the  
16 scheduled benefits prescribed in paragraph 1 of this subsection.

17 B. A member who receives monthly benefits from the LTD program is  
18 entitled to receive service credit pursuant to article 2 of this chapter from  
19 the time disability commences until benefits cease to be payable, except that  
20 for a member who receives monthly benefits from the LTD program on or after  
21 June 30, 1999 the number of years of service credited to the member's  
22 retirement account during the period the member receives LTD benefit payments  
23 shall not cause the member's total credited service for retirement benefits  
24 to exceed the greater of thirty years or the total years of service credited  
25 to the member's retirement account on the commencement of disability.

26 C. This section does not prohibit a member whose disability has been  
27 established to the satisfaction of the board from relying on treatment by  
28 prayer through spiritual means in accordance with the tenets and practice of  
29 a recognized church, religious denomination or Native American traditional  
30 medicine by a duly accredited practitioner of the church, denomination or  
31 Native American traditional medicine without suffering reduction or  
32 suspension of the member's monthly benefits.

33 D. For the purposes of this section:

34 1. "Received medical treatment" means that the member consulted with  
35 or received the advice of a licensed medical or dental practitioner,  
36 including advice given during a routine examination, and it includes  
37 situations in which the member received medical or dental care, treatment or  
38 services, including the taking of drugs, medication, insulin or similar  
39 substances.

40 2. "Social security" and "social security disability" includes the  
41 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States  
42 Code sections 231 through 231u).

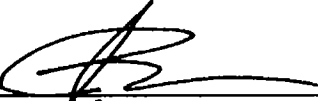
~~APPROVED BY THE GOVERNOR APRIL 25, 2005.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.~~

Passed the House February 21, 2005

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

  
Speaker of the House

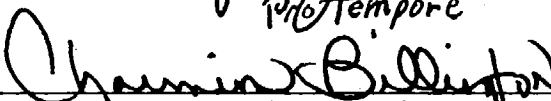
  
Chief Clerk of the House

Passed the Senate April 13, 2005

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

  
President of the Senate  
*Pro Tempore*

  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

       day of       , 20  ,

at        o'clock        M.

        
Secretary to the Governor

Approved this        day of

      , 20  ,

at        o'clock        M.

        
Governor of Arizona

H.B. 2472

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this        day of       , 20  ,

at        o'clock        M.


        
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 20, 2005,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

  
\_\_\_\_\_  
Speaker of the House  
Pro Tempore  
Norman L. Spore  
\_\_\_\_\_  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20th day of April, 2005

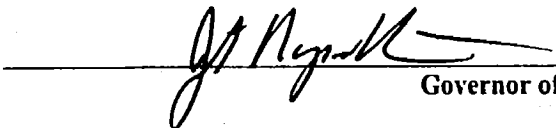
at 4:40 o'clock p. M.

Wannifer L. Herrera  
\_\_\_\_\_  
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 10<sup>00</sup> o'clock A. M.

  
\_\_\_\_\_  
Governor of Arizona

H.B. 2472

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.

Prince K. Brewer  
\_\_\_\_\_  
Secretary of State